IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13709 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANLAL MOTIBHAI VAGHELA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR AS SUPEHIA for the Petitioner
MR DA DESAI, ASSISTANT GOVERNMENT PLEADER for Respondent Nos. 1 and 3.
MR JB PARDIWALA for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/08/2005

ORAL JUDGMENT

1. Rule. Mr.D.A.Desai, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent Nos.1 and 3. Learned advocate Mr.J.B.Pardiwala waives service of notice of rule on behalf of respondent No.2.

2. With the consent of the parties, the matter is taken up for hearing today.

3. By filing this petition, the petitioner has challenged the order passed by respondent No.2 dated 30th June 2005 which is at Annexure-F, page No.15. By the said order, respondent No.2 cancelled the benefit of higher pay scale of Registrar granted to the petitioner with effect from 14.09.1998 and also passed consequential order of recovery. The petitioner was granted higher pay scale of Rs.6,500-200-10,500 which is prescribed for the Registrar of the Labour Court. In view of the letter of the Legal Department dated 29.06.2005, the said benefit is withdrawn and consequential order of recovery is passed.

4. Mr.A.S.Supehia, learned advocate for the petitioner submitted that the said order is passed without hearing the petitioner. He submitted that the petitioner was not instrumental in getting the said benefit of higher pay scale and recovery should not be affected.

5. It is not in dispute that the impugned order is passed without hearing the petitioner. In that view of the matter, without considering the merits of the issue whether such recovery can be affected or not, the matter is sent back to the respondent No.2 again for taking decision in accordance with law after hearing the petitioner. Any order which may have civil consequences cannot be passed without giving opportunity of being heard.

6. Under these circumstances, since the principle of natural justice is not followed, only on this ground, the petition is allowed. It will be open for respondent No.2 to pass

appropriate order in accordance with law after hearing the petitioner. If, ultimately, the decision is against the petitioner, it will be open for the petitioner to challenge the same in accordance with law.

7. Petition is allowed to the aforesaid extent by setting aside the impugned order since it is passed in violation of principal of natural justice, without hearing the petitioner. Respondent No.2 is directed to take decision after hearing the petitioner and in accordance with law.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.MAJMUDAR, J.)

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